FILED
MAY 18 1917
JAMES D. MAHER
CLERK

No. 25.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1916.

IN THE MATTER OF THE PETITION OF THE INDIANA TRANSPORTATION COMPANY FOR WRIT OF PROHIBITION. } Original.

SUPPLEMENTAL BRIEF FOR RESPONDENTS.

HARRY W. STANDIDGE,
PROCTOR FOR RESPONDENTS.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1916.

IN THE MATTER OF THE PETITION OF THE INDIANA TRANSPORTATION COMPANY FOR WRIT OF PROHIBITION.	Original.

SUPPLEMENTAL BRIEF FOR RESPONDENTS.

Petitioner in its reply brief cites authorities holding that where a party in apt time and in a proper manner specially objects to lack of, or irregularity in, service upon it, and the court overrules such specific objection, said party may then plead to the merits without waiving such specific objection.

Petitioner in the original exceptions filed by it did not make any such objection, the order of the court was that petitioner's exceptions "to joinder" be overruled, and petitioner in its subsequent exceptions stated that it did not waive its exceptions to the alleged "misjoinder" of libelants, and further alleged that said amended libel did not state facts and circumstances which made out a cause of action against it. (Return 19-21.)

Petitioner therefore entered its appearance to the

amended libel without service of process thereunder upon it.

Petitioner contends in its brief (18) that "there is nothing in admiralty law which can give a court jurisdiction in a case of this character without personal service," (See, to the contrary, authorities cited on pages 15-19 respondents' original brief) and adds:

> "It is admitted that it is not unusual to join a number of libelants in admiralty, but that, in no way obviates the necessity of having the defendant before the court."

Petitioner then cites a number of authorities holding that it is proper to join libelants, and no authority to the contrary.

Petitioner's second contention that it has been denied a jury trial by the joinder of libelants is without force, particularly for the reason that it has not demanded a jury trial, and may never do so.

Furthermore a party should not be able to make the administration of justice impossible by demanding a jury trial (See respondents' original brief, 13, 24-25), and when a court exercises its discretion in such a way as to make the administration of justice both practical and possible, as it is its duty to do (See respondents' original brief, 6-15), undoubtedly it is not the law, as petitioner apparently contends, that after the statute of limitations may have effect, parties will be prohibited from further prosecuting their proceedings in court.

Respectfully submitted,

HARRY W. STANDIDGE,
Proctor for Respondents.

SUBJECT INDEX.

PAGE.

Statement 1
Points and authorities 2-3
Prohibition, writ of, when will and will not lie..... 4
Petition, what must allege 4
Objection as to process, when must be made..... 4-5
Petitioner's position in lower and this court..... 5-6
Authorities as to joinder of libelants 6-9
Admiralty Rule 46, as to cases not provided for.... 9-12
U. S. Statutes, consolidation cases like nature..... 9-12
Constitution of Illinois, Sec. 19, Art. 2.....12-13
Multiplicity of suits, delay, equal justice.....10-15
Separate trials, unreasonable time required..... 13
Courts, power and duty to avoid delay, etc.....10-15
Petitioner seeking not alone delay 13-14
Prohibition, writ of, when denied 14-15, 20, 27
Process, waiver of 15-20
Process, service where found in admiralty...1, 4, 5, 19-20
Amended libel, joinder, citation apparently unnecessary 8
Appearance, general, what constitutes...4-6, 15-19, 25-27
Special appearance, what constitutes.....18-19
Statement in petition and brief, improper.....1, 19-20
Lower court, questions not raised, not considered..
.....4-6, 18, 21, 26-27
Jury trial, no demand by petitioner for.....21, 25
Jury trial under joinder or in consolidated cases..21-25
Separate jury trials practically impossible..... 24
Exceptions to amended libel, original, shown in petition 5-6
Exceptions to amended libel, additional, not shown in petition 25-26
Exceptions, waiver of complaint as to service.....
..... 4-6, 15-20, 25-27

Table of Cases.

PAGE.

Admiralty Rule 46, 210 U. S. 558 9
Alert, The, 40 Fed. Rep. 836 ..... 10, 14
Am. Tr. & Sav. Bank v. Ziegler Coal Co., 165 Fed. 34, 36 21
Am. Window Glass Co. v. Noe, 158 Fed. 777 21-22
Anchoria, The, 9 Fed. 840 6
Atkins v. Disintegrating Co., 85 U. S. 272, 298 ..... 16, 20
Barnes v. Western Union Tel. Co., 120 Fed. 550, 554 ..... 13, 17, 27
Butler v. Courier Citizen, 127 Fed. 1015 21
Central Trust Co. v. McGeorge, 151 U. S. 129 20
Clan Graham, The, 153 Fed. 977 9
Constitution of Illinois, Sec. 19, Art. II 12
4 Corpus Juris., pp. 1337-8 16
1 Cyc. of Law and Procedure, p. 851 6
32 Cyc. of Law and Procedure, pp. 602-3 4
Id., pp. 625-6 4
Denver Tramway Co. v. Norton, 141 Fed. 599 22
Eason, *ex parte*, 95 U. S. 68, 77 19
2 Ency. Pl. & Pr., p. 644 15
Id., p. 635 15
Epsilon, The, 6 Ben. 378, 389 11
Fed. Stat., p. 561, *et seq* 9
Fretz *et al.* v. Bull *et al.*, 53 U. S. 468 9
Gordon, *ex parte*, 104 U. S. 515 15
Hudson, The, 15 Fed. Rep. 162 14
Ins. Co. v. Hillmon, 145 U. S. 293 21-22
Jacobsen *et al.* v. Navigation Co., 93 Fed. 975 7
Judiciary Act, Secs. 913, 918, 921 ..... 9-10, 22-23
Knox *et al.* v. Summers *et al.*, 7 U. S. 495 16-17

PAGE.

Louisville Underwriters, *In re*, 134 U. S. 488..... 19

Lowry *et al.* v. Tile M. & G. Ass'n. of Cal., 98 Fed. 817 .....18, 26

Mut. Life Ins. Co. v. Hillmore, 145 U. S. 985.....21-22

N. Y., etc., S. S. Co., Pet'r., 155 U. S. 523.....10, 14

Oliver *et al.* v. Alexander, *et al.*, 31 U. S. 143..... 7

Platt v. Manning, 34 Fed. 817, 818..... 17

Pollard *et al.* v. Dwight *et al.*, 8 U. S. 421, 427..... 16

Rich *et al.* v. Lambert *et al.*, 53 U. S. 347, 352.....8, 24

Romaine v. Ins. Co. (C. C.), 28 Fed. 625..... 19

Ry. Co. v. McBride, 141 U. S. 127, 130..... 18

Salmon Falls Mnfg. Co. v. Tangier *et al.*, 3 Ware (U. S.) 110, 21 Fed. Cas. 266.....10, 23

Samson, The, 197 Fed. 1017..... 9

Stone v. United States, 64 Fed. 667, 672..... 23

Western L. & S. Co. v. B. B. Cons. M. Co., 210 U. S. 368 20

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1916.

No. 25.

IN THE MATTER OF THE PETITION OF THE INDIANA TRANSPORTATION COMPANY FOR WRIT OF PROHIBITION. } Original.

BRIEF IN SUPPORT OF RETURN OF RESPONDENTS.

STATEMENT.

Petitioner on page 3 of its petition alleges that at the time of the amending of the libel in the cause in question petitioner was a non-resident of, and not doing business in, Illinois, and therefore was not subject to service upon it by process of the District Court of the United States for the Northern District of Illinois. On pages 2 and 3 of its brief it states the above and also says that it is not doing business within said district, or anywhere in the State of Illinois, and that it has no property within said district, and then further states its conclusion of law that it was not, at the time of the filing of said amended libel, nor at any subsequent time, subject to service within said district. Such statements are improper and should be disregarded. Said matters were not shown in the lower court, and statements on which said conclusions of law are based, if true, do not show that service upon petitioner, if required, could not be had in said district.

POINTS AND AUTHORITIES.

I.

THE PETITION SHOWS ON ITS FACE THAT PETITIONER IS NOT ENTITLED TO THE RELIEF PRAYED FOR THEREIN.

32 Cyc. of Law and Procedure, pp. 602.3.
Id., pp. 625-6.
1 Cyc. of Law and Procedure, p. 851.
The Anchoria, 9 Fed. 840.
Jacobsen et al. v. *Navigation Co.*, 93 Fed. 975.
Oliver et al. v. *Alexander et al.*, 31 U. S. 143.
Rich et al. v. *Lambert et al.*, 53 U. S. 347, 352.
Fretz et al. v. *Bull et al.*, 53 U. S. 468.
Admiralty Rule 46, 210 U. S. 558.
The Clan Graham, 153 Fed. 977.
The Samson, 197 Fed. 1017.
4 Fed. Stat., pp. 561-2 (note).
Secs. 913, 918, 921, Judiciary Act.
4 Fed. Stat., p. 561, *et seq.*
Salmon Falls Mnfg. Co. v. *Tangier*, 3 Ware (U. S.) 110.
The Alert, 40 Fed. Rep. 836.
In re N. Y., etc., S. S. Co., Pet'r, 155 U. S. 523.
The Epsilon, 6 Ben. 378, 389.
Sec. 19, Article II, Constitution of Illinois.
Barnes v. *Western Union Tel. Co.*, 120 Fed. 550.
In re N. Y., etc., S. S. Co., Pet'r, *supra.*
The Hudson, 15 Fed. Rep. 162.
The Alert, *supra.*
Ex parte Gordon, 104 U. S. 515.
2 Ency. Pl. & Pr., p. 644.
Id., p. 635.
4 Corpus Juris, pp. 1337-8.

Atkins v. *Disintegrating Co.*, 85 U. S. 272, 298.
Knox et al. v. *Summers et al.*, 7 U. S. 495.
Pollard et al. v. *Dwight et al.*, 8 U. S. 421, 427.
Platt v. *Manning*, 34 Fed. 817, 818.
Lowry et al. v. *Tile M. & G. Ass'n of Cal.*, 98 Fed. 817.
Ry Co. v. *McBride*, 141 U. S. 127, 130.
Barnes v. *Western Union Tel. Co.*, 120 Fed. 550, 554.
Romaine v. *Ins. Co.*, (C. C.) 28 Fed. 625.
Ex parte Eason, 95 U. S. 68, 77.
In re Louisville Underwriters, 134 U. S. 488.
Atkins v. *Disintegrating Co., supra.*
Central Trust Co. v. *McGeorge*, 151 U. S. 129.
Western L. & S. Co. v. *B. B. Cons. M. Co.*, 210 U. S. 368.
Ins. Co. v. *Hillmon*, 145 U. S. 293.
Butler v. *Courier Citizen*, 127 Fed. 1015.
Am. Tr. & Sav. Bank v. *Zeigler Coal Co.*, 165 Fed. 34, 36.
Am. Window Glass Co. v. *Noe*, 158 Fed. 777.
Denver Tramway Co. v. *Norton*, 141 Fed. 599.
Stone v. *United States*, 64 Fed. 667, 672.
Salmon Falls Mnfg. Co. v. *Tangier et al.*, 21 Fed. Cas. 266.

II.

PETITIONER IS NOT ENTITLED TO THE RELIEF WHICH IT PRAYS FOR, BY REASON OF EXCEPTIONS FILED BY IT TO SAID AMENDED LIBEL WHICH IT HAS FAILED TO SET FORTH IN ITS PETITION.

Lowry et al. v. *Tile M. G. Ass'n of Cal. et al.*, 98 Fed. 817.
Barnes v. *Western Union Tel. Co.*, 120 Fed. 550.

ARGUMENT.

I.

THE PETITION SHOWS ON ITS FACE THAT PETITIONER IS NOT ENTITLED TO THE RELIEF PRAYED FOR THEREIN.

> "A writ of prohibition will lie only in cases of manifest necessity, and after a fruitless application for relief to the inferior tribunals. It is properly issued only in cases of extreme necessity. It will not be granted where a greater injustice would be done by its issue than would be prevented by its operation, or where the legal right is doubtful and the remedy would involve public inconvenience."
>
> 32 Cyc. of Law and Procedure, pp. 602-3.
>
> "The petition for the writ of prohibition must show unequivocally every fact requisite to justify the issuance. * * *
>
> "The petition * * * must allege * * * that petitioner * * * either has not consented to the jurisdiction or has objected to it in the lower court."
>
> *Id.*, pp. 625-6.

The above and various other authorities cited herein show that if a party desires to object to alleged irregularity in or lack of proper service of process upon it, such party must do so at the first opportunity, and if, without raising such objection, it pleads otherwise, it will not be entitled to a writ of prohibition in this court on a petition showing that it did not properly raise any such objection in the lower court, and this rule cannot be changed because, as in the case at bar, such party in its petition (see page 3 of petition herein) improperly alleges its own conclusions that at the time it might have raised

such objection in the lower court such service could not have been had upon it, nor because it also improperly alleges in the statement in its brief (see pages 2-3 of petitioner's brief herein), its further conclusions that up to the time of the filing of its petition such service could not have been had upon it.

For these and other reasons, it is manifest that the petition herein shows on its face that petitioner is not entitled to the relief prayed for therein.

In the District Court, in the cause in question, as shown by said petition, petitioner was served with a citation under the original libel, and without raising any objection whatever that it had not again been served with a citation under the amended libel, pleaded to said amended libel by filing exceptions thereto alleging that the same was insufficient because 373 additional libelants were improperly joined with the original libelant therein, which exceptions constituted a general appearance on the part of petitioner, being entitled in said cause and signed by petitioner, by its proctor, Mr. Charles E. Kremer, who is also proctor for petitioner herein, and being otherwise as follows:

> "And now comes the Indiana Transportation Company, one of the respondents above named, and excepts to the amended libel of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, in the following particulars:
>
> 1st. That the said amended libel is informal, contrary to the admiralty rules and procedure and contrary to law because it joins with the original libelant 373 additional libelants who have a separate and distinct cause of action from that of the original libelant and are therefore improperly joined.
>
> 2d. Because the above named respondent cannot in law in this case be called upon to answer

the said amended libel as to 373 additional libelants.

3d. In all of which particulars the said amended libel is imperfect and insufficient and that the said respondent is not bound to answer the same as to the 373 additional libelants improperly joined to the original libel."

In this court, however, petitioner, contrary to its contentions in said exceptions in the court below, on page 18 of its brief filed in support of its petition herein, states that "It is admitted that it is not unusual to join a number of libelants in admiralty," and it then cites a number of authorities which lay down the rule that it is proper to join them, yet it asks a writ of prohibition on the ground that it was not served with a citation under said amended libel, which point, however, it states on page 19 of its said brief, it believes was never before raised in any case, and which, as shown by its said petition, was not properly raised by it in the lower court.

In addition to the authorities cited by petitioner to the effect that in admiralty it is proper to join in one proceeding all libelants having like causes of action, the following authorities also lay down the same rule:

In 1 Cyc. of Law and Procedure, p. 851, it is said:

"Joinder of libelants. Parties whose interests or claims are based upon a cause of action common to all, though separate and distinct as between themselves, may unite as libelants, whether the claims arise out of contract or tort."

In the case of The Anchoria, 9 Fed. 840, the court says:

"All persons entitled on the same state of facts to participate in the same relief may join as libelants."

In *Jacobsen et al.* v. *Nav. Co.*, 93 Fed. 975, cited by petitioner in its brief, a libel *in personam* was filed by one Jacobsen, who sued for loss of his vessel and other property and for personal injuries. Two other parties joined in the libel, one as administrator of a deceased person who was on board of the vessel and who was drowned, and the other party sued for damages for alleged personal injuries and lost personal property. The court, on page 976, says:

> "The rule as to the question of misjoinder is that all parties in admiralty suits may join as libelants whose interests rest upon a cause of action common to all, though as between themselves, their interests are separate and distinct, * * * and this rule applies both in suits *in personam* and *in rem;* * * * in this case, the cause of action being common to all the parties, it is sufficient; it is not material that the interests of the parties are distinct."

In *Oliver et al.* v. *Alexander et al.*, 31 U. S. 143, a libel was filed by one libelant against a ship to recover wages. By subsequent amended libels, 77 other parties having like claims were added as libelants. The court stated (p. 145) that such claimants could not sue in a joint action at common law, and added:

> "But a different course of practice has prevailed for ages, in the court of admiralty, in regard to suits for seamen's wages."

The court further stated that such practice was a privilege confined strictly to demands for wages, which statement, however, was *obiter dictum,* and is not in accord with later decisions of the courts and the authorities herein cited.

The court also says that the reason for the privilege of consolidation is "to save the parties from

oppressive costs and expenses, and to enable speedy justice to be administered to all who stand in a similar predicament."

The decision does not show whether or not a new citation was issued on the filing of each amended libel adding additional parties libelant.

The principal purposes of the joinder and consolidation rule in admiralty being, however, to save parties from oppressive costs and expenses and enable speedy justice to be administered to all who stand in a similar predicament, as held in said Oliver case, *supra,* and various other cases, it would seem that such additional service was unnecessary and contrary to the spirit of said rule, and clearly such additional service is not required where a party, without such service, and without objecting to the lack thereof, voluntarily enters its appearance, as petitioner did in the case at bar.

In *Rich et al.* v. *Lambert et al.,* 53 U. S. 347, 352, the court said:

> "In cases where the several claims against a ship are founded upon a common injury and loss, the questions involved depending upon the same general rules of law, and the same evidence equally applicable to all of them, it is fit and proper that the proceedings should be joint, by allowing the parties to unite in the libel, or by an order for consolidation, if separate suits have been instituted.
>
> The defense will usually be the same in all cases; but, if otherwise, the parties will not be prejudiced, as they may avail themselves in their answers of any defense existing against either of the several owners. For, although the proceeding assumes the form of a joint suit, it is in reality a mere joinder of distinct causes of action by distinct parties, arising out of a common in-

> jury, and which are heard and determined, so far as the merits are concerned, the same as in the case of separate libels for each cause of action. The same decree, also, is entered as in the case of separate suits."

In *Fretz et al.* v. *Bull et al.*, 53 U. S. 468, the court says:

> "But all persons entitled on the same state of facts to participate in the same relief may join as libelants, whether the suit be *in personam* or *in rem.*"

Under admiralty rule 46, in cases not expressly provided for, courts may regulate their practice in such manner as they deem most expedient for the due administration of justice, and under said rule even actions *in rem* and *in personam* may be joined, as held in the cases of The Clan Graham, 153 Fed. 977, and The Samson, 197 Fed. 1017, and other cases.

Said rule 46 (210 U. S. 558) provides as follows:

> "In all cases not provided for by the foregoing rules the District and Circuit Courts are to regulate the practice of the said courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty."

The United States statutes also provide for the consolidation in admiralty of causes of a like nature, and confer on the District Court power to make rules which will best subserve the interests of justice.

In note referring to Sec. 913 of the Judiciary Act, pp. 561-2, Vol. 4, Fed. Stat., it is said:

> "Powers as ample as legislation can give are conferred by this section and Section 918, R. S., *infra*, in cases of admiralty and maritime jurisdiction as to the forms and modes of proceeding, and such alterations or additions thereto as the said courts shall in their discretion deem expedi-

> ent, and 'to regulate the practice as shall be deemed fit and necessary for the advancement of justice, subject only to any existing provisions of law or the rules established by the Supreme Court.' "

Section 921 of said Judiciary Act provides for consolidation of causes of a like nature or relative to the same question, and in *Salmon Falls Mnfg. Co.* v. *Tangier,* 3 Ware (U. S.) 110, it is said that in admiralty proceedings said Section 921 is merely an affirmance of pre-existing law.

It would therefore seem unreasonable to say that the 373 causes of action of libelants, in the case at bar, instead of being joined, as they were, in said amended libel, should first have been brought separately, and then consolidated later under the provisions of said statute.

The power, and also the duty, of the District Courts, as courts of original jurisdiction in admiralty, to so regulate their practice as to avoid a multiplicity of suits, and to secure uniformity of procedure for, and equal justice to, all parties having like causes of action—and the larger the number of such parties, as, for example, the number in the case at bar, the greater the opportunity for inequality of results if there should not be such uniformity of procedure, is well stated in the case of The Alert, 40 Fed. Rep. 836, wherein complaint was made by one of the parties that it was brought into the proceeding by improper process, and the opinion of the District Court holding to the contrary therein, was said by this court, in *In re* N. Y., etc., Steamship Co., Pet'r, 155 U. S. 523, to be "an able and exhaustive discussion on the question involved."

The District Court said that the propriety of its holding in the matter did not depend upon the form of the action, whether it be in contract or in tort, but on the essential reasons for it, viz., the due administration of justice; to prevent circuity of action and a multiplicity of suits upon the same question; to secure a thorough hearing upon full evidence as to to the facts; to prevent diverse or contradictory decisions upon the same subject, involving, necessarily, injustice to some of the parties. And said court further stated (pp. 838-9):

> "Both the statutes and the admiralty court rules, in cases not provided for, authorize the court 'to regulate its practice as is fit and necessary for the advancement of justice.' Rev. St., Secs. 913, 918, rule 46; The Hudson, 15 Fed. Rep. 175. This authority is a power held in trust for the benefit of litigants, and it is the duty of the court to exercise it in proper cases, by adapting its procedure to the practical needs of justice. On this point BENEDICT, J., in the case of The Epsilon, 6 Ben. 378, 389, says:
>
> 'The admiralty creates its own forms of proceeding, and adapts methods of its own to the varied necessities which present themselves to its consideration. The power to do this is part, and the important part, of the jurisdiction of the admiralty. "The principles, rules and usages which belong to courts of admiralty" (Process Act 1792) enable these courts to work justice between man and man with celerity and economy. They accomplish this by ways unknown to other courts, and for many of which it were vain to look in any statute. Stripped of the power to pursue these methods, there would be little left to distinguish a court of admiralty from a court of equity or of law. * * * When cases arise which have not been provided for in the rules prescribed by the Supreme Court, the District Courts, as the only courts of original jurisdic-

> tion in admiralty, have the power and are bound to devise modes of proceeding which shall enable them to carry into effectual execution any law which they are called to administer.' "

Section 2 of the syllabus in the above case, in addition to instructively characterizing the language of the court therein, also seems in itself to state in apt terms a rule applicable to the case at bar, as follows:

> "It is the duty of courts of admiralty, under their inherent and statutory powers, to adapt their practice and proceedings to new emergencies, so as to secure, as far as possible, the speedy, complete and convenient administration of justice."

It seems clear that it is the duty of courts of admiralty to so regulate their practice and proceedings and to so adapt the same to new emergencies that when an unusually large number of persons, such as in the case at bar, have like causes of action, justice will not be denied to many, and perhaps most, of such persons, because the machinery of the courts is not sufficient to grant a separate trial upon the claim of each of a great portion of them, within their probable lifetimes, and in any event, within at least not less than a period of many years to come.

And particularly is this true where, as in the case at bar, nearly all of said causes of action are for alleged wrongful deaths, existing under the statutes of the State of Illinois, and in Section 19 of the Bill of Rights set forth in Article II of the Constitution of said state, it is provided as follows:

> "Every person ought to find a certain remedy in the laws for all injuries and wrongs which he may receive in his person, property or reputation; he ought to obtain, by law, right and justice freely, and without being obliged to pur-

> chase it, completely and without denial, promptly, and without delay."

It is reasonable to believe that at least two weeks would be required for a separate trial on any one of the claims of the 373 libelants named in the amended libel in the case at bar (there being 12 defendants, such a trial it is probable would last considerably longer), and on the basis of two weeks for each trial, the 373 cases would require continuous trials for more than 15 years.

In *Barnes* v. *Western Union Telegraph Co.*, 120 Fed. 550, in denying the application of the defendant therein to withdraw his demurrer and answer and plead irregularity of service, the court said that the granting of such application "could only serve to delay the trial of the case on the merits," and that "This it is the duty of the court to avoid." And the court added:

> "Indeed, it is ever the duty of the court, entrusted with the administration of justice between contending parties, to exercise its discretion and all of its ascertained powers to bring the parties to have the cause speedily determined on its merits."

In the case at bar, petitioner, by its application for a writ of prohibition, is not alone seeking for delay; it is also seeking to avoid answering unto libelants for the wrong which it is alleged to have done; and on its dilatory objection that it was not served with a citation under said amended libel, it prays a writ of prohibition prohibiting the court from proceeding with the hearing of any of the claims of said additional libelants; and it does not pray such prohibition until it shall have been, as it claims it had a right to be, served with a citation under said amended

libel; it prays such prohibition without any limitation or qualification whatsoever.

In *In re* N. Y., etc., Steamship Co., Pet'r, 155 U. S. 523, the court denied a writ of prohibition which was prayed for on the ground that the court had no jurisdiction in a cause originally brought *in rem* against a vessel, to allow petitioner, as charterer of the vessel, to be joined later in the same cause in a proceeding *in personam*, petitioner having appeared "specially for the purpose of objecting to the jurisdiction of the court," and the court having overruled peitioner's objections in that regard, and the Supreme Court held that if the lower court erred in so ruling, such error might be corrected on appeal.

The Supreme Court in denying the application for said writ of prohibition, cited the cases of The Hudson, 15 Fed. Reports 162, and The Alert, 40 Fed. Reports 836, and stated that in the case of The Hudson it was held that where several vessels are alleged to be in fault in causing a collision, in a libel brought by a party to recover damages sustained by reason thereof, all the vessels should be proceeded against as defendants to avoid multiplicity of suits, and to enable damages to be properly apportioned, and that if libelant proceeded against one vessel only, it was competent for the District Court to award its further process in the cause, upon petition of the owner of the vessel sued, for the arrest of the other vessels to answer for their share of the damage, and added:

> "The question of the right to pursue this course was discussed at large by the learned judge and the conclusion reached that it was competent for the District Court in cases not provided for by the rules in admiralty of this court to regulate its own practice and to allow

> remedies according to the analogies of admiralty procedure as new exigencies arose, which the court might deem necessary for the due administration of justice; and that it was essential and expedient in collision cases in admiralty that the liability of all persons or vessels involved should be determined in a single action rather than in successive independent suits."

In *Ex Parte* Gordon, 104 U. S. 515, the court denied a writ of prohibition to prevent the District Court of Maryland, sitting in admiralty, from proceeding further in a cause begun in that court against a vessel to recover damages for the drowning of certain persons, by reason of a collision between said vessel and another steamer.

Petitioner in the case at bar, although admitting, as stated, that "it is not unusual to join a number of libelants in admiralty," further states on page 18 of its brief that "There is nothing in admiralty law which can give a court jurisdiction in a case of this character without personal service."

Petitioner seems to have overlooked the following authorities:

In 2 Encyclopaedia of Pleading and Practice, p. 644, it is said:

> "Waives Process.—The object of a summons or process is to put the defendant upon notice of the demand against him, and to bring him into court at the time therein specified. If the defendant makes a general appearance, then the issuing and service of process is not jurisdictional and it is waived. The court can thereafter proceed and grant any relief to which the plaintiff is entitled."

And on page 635 the author also states:

> "Any challenging the sufficiency of a pleading is a general appearance; by interposing a de-

murrer to the complaint or declaration the defendant makes full appearance in the action."

Also, in 4 Corpus Juris, pp. 1337-8, it is said:

> "The filing of a demurrer, unless based solely on the ground of lack of jurisdiction of the person, constitutes a general appearance, whether it is filed to plaintiff's original pleading or to an amended or substituted pleading."

In *Atkins* v. *The Disintegrating Company*, 85 U. S., pp. 272, 298, the court said that "The defendants entered their appearance without reservation," and added:

> "This made their position just what it would have been if they had been brought in regularly by the service of process. In this aspect of the case all defects were cured and the jurisdiction of the court over their persons became complete. This warranted the decree *in personam* for the amount adjudged to the libelants."

In *Knox et al.* v. *Summers et al.*, 7 U. S. 495, it was held that an appearance of defendant by an attorney cures all antecedent irregularity of process, the court saying (p. 498):

> "The court was unanimously of opinion that the appearances by attorney cured all irregularity of process. The defendant, perhaps, might have appeared *in propria persona*, and directly pleaded in abatement. But having once appeared by attorney, he is precluded from taking advantage of the irregularity."

In *Pollard et al.* v. *Dwight et al.*, 8 U. S. 421, 427, the court said:

> "The point of jurisdiction made by the plaintiffs in error is considered free from all doubt. By appearing to the action the defendants in the court placed themselves precisely in the situation in which they would have stood had process been served upon them, and consequently,

waived all objections to the non-service of process."

In *Platt* v. *Manning,* 34 Fed. 817, 818, it is said:

> "The office of a summons is to bring the defendant into court. He may come in voluntarily if he chooses, and, having done so, and having pleaded to the merits, he is not at liberty to dispute the jurisdiction of the court because not regularly served with process."

In *Lowry et al.* v. *Tile M. & G. Association of California,* 98 Fed. 817, it was held that a demurrer raising questions as to jurisdiction and also as to sufficiency of complaint, constituted a general appearance and waives the question of jurisdiction, the court citing various authorities, and saying:

> "The appearance of defendants demurring in this action must, in view of these authorities, be regarded as a general appearance, and they are therefore prevented from objecting that their co-defendants are improperly joined with them on the ground that they are being sued in the wrong district."

And among other cases the court cites the case of *Ry. Co.* v. *McBride,* 141 U. S. 127, 130, to the same effect.

In *Barnes* v. *Western Union Telegraph Co.,* 120 Fed. 550, 554, the court stated that the defendant could make its defense as perfectly on irregular service of summons as if regularly served, and added:

> "The court therefore will not impose upon the plaintiff the unnecessary delay and expense of a further service, or the possibility of a denial of the hearing on the merits, because of this inadvertence, if in the light of the authorities this can be avoided."

The court cites the case of *Knox et al.* v. *Summers et al.,* 7 U. S. 495, above quoted herein, as a con-

trolling authority and says that the rule laid down therein applies, notwithstanding the fact that in a motion made by the defendant to dismiss, the defendant stated that it appeared at the first term of the court, " 'not for the purpose of submitting to the jurisdiction thereof, but to protest that the court has no jurisdiction in said cause, and moves to dismiss plaintiff's petition on the ground that it appears on its face that the court has no jurisdiction of the alleged cause of action or of this defendant in said cause; second and third, that there was no legal process, it being directed to the marshal and served by the deputy,' etc.," and the court adds:

> "The special appearance, therefore, seems to relate exclusively to its denial of jurisdiction, and not to the alleged irregularity of service. It is nowhere stated that the appearance is to object that the service was irregular or invalid. A denial of jurisdiction of the subject of the action or of the person of the defendant is a ground of defense wholly distinct from that of an irregular service. The special appearance by demurrer is therefore limited to the special apeparance as set forth in the motion to dismiss, as we have seen, this is a special appearance solely for the purpose of protesting against the jurisdiction of the court."

This language appears applicable in the case at bar, petitioner having nowhere stated, in the exceptions filed by it to said amended libel that it appeared for the purpose of objecting that service of citation had not been had upon it under said amended libel, and the allegations in said exceptions that said amended libel improperly joined the libelants named therein, and was insufficient by reason thereof, was a ground of defense wholly distinct from that of such lack of service upon it under said amended libel.

The court in the Barnes case, *supra*, further says that it has been held that "where an objection is made to the irregularity of service, in order to avoid a waiver thereof, the proper practice is to obtain an order of the court for leave to make a special appearance," and in support of such statement the court cites the case of *Romaine* v. *Insurance Company*, (C. C.) 28 Fed. 625.

The statements in the sixth paragraph, on page 3 of the petition, that at the time of the amending of the libel in said cause petitioner was a foreign corporation and non-resident of the State of Illinois, and not doing business in said state, and other statements in that regard appearing in the brief, are improperly set forth therein and should be disregarded by the court, for the reason that, as shown by said petition, no such showing was made in the lower court, and as stated in the case of *Ex Parte* Eason, 95 U. S. 68, 77, the question whether or not a court has transcended its jurisdiction "must depend not upon the facts stated *de hors* the record, but upon those stated in the record upon which the District Court is called to act, and by which alone it can regulate its judgment."

Furthermore, in the case of *In re* The Louisville Underwriters, 134 U. S. 488, the court denied a writ of prohibition, holding that the provisions of the act of March 3, 1887, that "no civil suit" shall be brought before a Circuit or District Court against any person in any other district than that of which he is an inhabitant, does not apply to cases in admiralty.

In admiralty, also, a party may be served with

process wherever such party may be found, and if such party cannot be found, service may be had through attachment of its property.

Atkins v. *The Disintegrating Co.*, 85 U. S. 272.

The question of jurisdiction may be waived also, even if neither plaintiff nor defendant resides in the district in which the suit is brought.

Central Trust Co. v. *McGeorge*, 151 U. S. 129.

Western L. & S. Co. v. *B. B. Cons. Min. Co.*, 210 U. S. 368.

The statement on page 3 of said petition, that "no process was prayed for or issued under said amended libel," also should be disregarded, because the petition herein does not contain a copy of the prayer of said amended libel, and further because said amended libel prays the issuance of due process against all respondents, including petitioner, and a citation was issued against all respondents who were not parties to, and who were not served with a citation under the original libel, as shown by the return herein.

If petitioner had been entitled to be served with a citation under said amended libel, and had insisted upon being so served, before pleading thereto, such service might have been had upon it. Having pleaded to said amended libel, however, without objecting that it had not been so served, and without insisting upon such service, before pleading thereto, it waived its right, if any it had, to such service, and having waived such right, if such right it had in the lower court, it should not now have a writ of prohibition from this court for the restoration thereof.

Petitioner contends on page 25, *et seq.*, of its brief, that the court had no jurisdiction to join all the libelants in one suit because each party is entitled to a jury trial, and that such joinder operates to deprive petitioner of its right to a jury trial.

Petitioner, as shown by said petition, *has not demanded a jury trial*, and a court in considering the question of whether or not a writ of prohibition should be granted, will take the record as it finds it and will not speculate as to what it might have done if the party applying for such writ had taken some action which it did not take in the lower court.

In *Insurance Co.* v. *Hillmon*, 145 U. S. 293, it was said that "although defendants may lawfully be compelled, at discretion of court, to try cases together, the causes of action remain distinct, and require separate verdicts and judgments, and no defendant can be deprived without its consent of any right material to its defense, whether by way of challenge to jurors or of objections to evidence which such defendant would be entitled to on separate trial.

In *Butler* v. *Courier Citizen*, 127 Fed. 1015, it was held that actions for libel may be tried together, although questions as to damages differ.

In *Am. Tr. & Sav. Bank* v. *Zeigler Coal Co.*, 165 Fed. 34, 36, the court says:

> "The method of trial so adopted, with the two cases treated as separate causes of action, requiring separate verdicts and judgments, conforms to the purposes of the statute referred to, as upheld in *Mutual Life Ins. Co.* v. *Hillmon*, 145 U. S. 285, 293, 12 Sup. Ct. 909, 36 L. Ed. 706, and recognized in *American Window Glass Co.* v. *Noe* (decided by this court during the current term), 158 Fed. 777; 86 C. C. A. 133."

In the case of *American Window Glass Co.* v. *Noe*,

158 Fed. 777, cited *supra* in an opinion by Judge BAKER, sitting with Judges SEAMAN and KOHLSAAT, of the Circuit Court of Appeals of the Seventh Circuit, it is said:

> "Section 921, Rev. St. (U. S. Comp. St. 1901, p. 685), authorizes the consolidation of cases for the purpose of trial 'when it appears reasonable to do so.' The ground of plaintiff's motion was that he and the other plaintiff were injured in the same accident, and that the same evidence, except as to the extent of the injuries, was determinative of both cases. The only stated reason of defendant's opposition was the disparity between the injuries, the other plaintiff being comparatively unhurt, while this plaintiff was rendered utterly and forever helpless. Undoubtedly the condition of this plaintiff made a very strong appeal to the sympathies of the jury; but the record contains nothing that affords a basis for concluding that the verdict was other than it would have been if this case had been tried alone. The possibility, or our conjecture, that a separate trial might have resulted differently, is no warrant for holding that the trial judge in sustaining the motion abused the discretion that is lodged in him by the statute. If ever this discretion may fitly be exercised in sustaining a contested motion of this character, it would seem to be when the parties agree that all question except as to the amounts of the claims are covered by the same evidence. *Denver Tramway Co.* v. *Norton*, 141 Fed. 599, 73 C. C. A. 1; *Mutual Life Ins. Co.* v. *Hillmon*, 145 U. S. 285, 12 Sup. Ct. 909, 36 L. Ed. 706."

In *Denver Tramway Co.* v. *Norton*, 141 Fed. 599, above cited, the court said:

> "Complaint is made of the action of the court in directing a consolidation of the two cases for trial. The two actions grew out of the same accident, with the same defenses, and defended on the same evidence. The only difference be-

ing in the matter of damages dependent upon the extent of the injury sustained by the respective plaintiffs. Such a consolidation was clearly within the judicial discretion reposed in the court by Section 921, Rev. St. U. S. (U. S. Comp. St. 1901, p. 685).

In *Stone* v. *United States,* 64 Fed. 667, the government brought an action to recover the value of certain timber cut and removed from public lands, and such action was consolidated and tried with another similar case. The court said (p. 672):

> "The two cases were consolidated. The authority of the court to order them to be tried together is not denied. The right to do this when the cases involve substantially the same issues, and delay and expense would thereby be avoided, is unquestioned. *Insurance Co.* v. *Hillmon,* 145 U. S. 293, 12 Sup. Ct. 909, and authorities there cited."

In *Salmon Falls Mnfg. Co.* v. *The Tangier, Goddard et al.* v. *Same, and Pearson* v. *Same,* case No. 12,267, 21 Fed. Cas. 266, the court said:

> "Before proceeding to examine these cases on their merits, it may not be improper to observe that some time and some expense would have been saved if these three libels had been united in one; or if, before hearing the first, the three had been consolidated and heard together. They all involve one or more questions as to the liability of the vessel for the loss of the cotton under circumstances common to all. Such a joinder of parties, where several persons have causes of action of a like nature, and involving one or more questions common to all, is authorized by the general principles of admiralty practice. It has from time immemorial been the familiar usage in the case of seamen suing for their wages. But it is a right which extends to all parties in analogous cases. The Supreme Court has held that it extends to several con-

> signees suing for damages sustained by their goods from the unseaworthiness of the vessel or the fault of the master. *Rich* v. *Lambert*, 12 How. (53 U. S.) 353. And I have supposed that it embraced suits by material men, where the liability of the vessel is a question involved. Such joinder is not only authorized by the general principles of admiralty practice, but is specially enjoined by the process act of July 22, 1813 (3 Stat., p. 19, Sec. 3). The act, so far as it applies to proceedings in the admiralty, I understand to be merely in affirmance of the pre-existing law of the court. In such cases of joinder or consolidation, all the evidence touching the questions common to all the cases, is taken but once, and when these questions are decided, the cases become separate and distinct, and each party litigates his own on its own peculiar merits."

Courts throughout the country instruct juries that they shall not consider the question of damages until they have determined the question of liability.

In the case at bar the question of liability as to all libelants and respondents, including petitioner, should be determined but once, and if a jury should be demanded, and its determination of the question of liability would entitle libelants to damages, as the authorities hold that when cases are tried together there must be separate verdicts and decrees, a jury could render its verdict as to damages immediately after hearing the evidence as to the loss, if any, sustained by each libelant.

Separate jury trials would be practically impossible on account of the time required, and there might be such lack of uniformity of result as to bring the law into disfavor.

Therefore, if a jury trial should be demanded in

the case at bar, the procedure above suggested for such a trial seems practical and proper, and if it is not, the court should devise some procedure that would be.

As stated, however, petitioner has not demanded a jury trial, and is not entitled to have this court hold that it has been deprived of something which it has not asked for.

II.

PETITIONER IS NOT ENTITLED TO THE RELIEF WHICH IT PRAYS FOR, BY REASON OF EXCEPTIONS FILED BY IT TO SAID AMENDED LIBEL WHICH IT HAS FAILED TO SET FORTH IN SAID PETITION.

After the court on September 18, 1916, had overruled the original exceptions filed by petitioner to said amended libel and had ordered petitioner to plead thereto within 20 days thereafter, petitioner, within said period of 20 days, and on October 7, 1916, and before the filing of its petition herein, filed additional exceptions to said amended libel entitled in said cause, and being otherwise as follows:

> "And now comes the Indiana Transportation Company, one of the respondents above named, and excepts to the amended libel of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, and others, as follows:
>
> This respondent does not hereby waive its exceptions heretofore filed in relation to the misjoinder of 373 additional libels and its right, and insists that this court has not jurisdiction of the respondent of so much of the said amended libel as sets up the claims of the 373 additional libelants, joined with the original libel, and it therefore insists upon its right to further object to the joining of said 373 additional libelants, and further because said amended libel does not state

facts and circumstances which make out a cause of action against this respondent, in all of which particulars the said amended libel is imperfect and insufficient, and that the said respondent is not bound to answer the same.

INDIANA TRANSPORTATION COMPANY,
By C. E. KREMER,
Its Proctor.

C. E. KREMER,
Proctor for the Indiana Transportation Company."

Petitioner in said additional exceptions, as in said original exceptions, makes no complaint whatever that it was not served with a citation under said amended libel. It insists upon its right to further object to the joinder of said additional libelants in said amended libel, and also alleges that said amended libel "does not state facts and circumstances which make out a cause of action against petitioner, and that in all of said particulars said amended libel is imperfect and insufficient," and that "petitioner is not bound to answer same."

In *Lowry et al.* v. *Tile M. G. Ass'n of California et al.*, 98 Fed. 817, certain defendants filed a demurrer raising questions as to jurisdiction, and also as to sufficiency of the complaint. The court said (pp. 822-3):

> "A general appearance, therefore, on the part of the defendants, must be deemed a waiver of the objections to the misjoinder because the other defendants are not inhabitants of this district. Counsel contend that they have not made such a general appearance, but have demurred specially on the ground that certain defendants are improperly joined with them. The terms of the demurrer constitute a sufficient answer to this contention.
>
> The grounds of demurrer are not confined to the jurisdiction of the court, but the merits of

the case are involved in the objection that the complaint does not state facts sufficient to constitute a cause of action. * * *

In the case at bar defendants did not file their demurrer 'for the special and single purpose of objecting to the jurisdiction,' but for the further purpose of attacking the merits of the case upon the facts as stated in the complaint; and this last issue the court is called upon to decide as a material question in controversy, as will appear hereafter. The appearance of defendants demurring in this action must, in view of these authorities, be regarded as a general appearance, and they are therefore prevented from objecting that their co-defendants are improperly joined with them on the ground that they are being sued in the wrong district."

See also *Barnes* v. *Western Union Telegraph Co.*, 120 Fed. 550, in which case the court holds that a party objecting to lack of jurisdiction of the court because of alleged irregularity of service must point out specifically its objection in that regard or be held to have waived such objection if it pleads without so pointing out the same, and the court cites authority that the proper practice is to obtain an order of the court for leave to make a special appearance.

Other authorities above cited also show that both the original and additional exceptions filed by the petitioner to the amended libel constitute a general appearance on the part of petitioner in said cause, and petitioner is not entitled to a writ of prohibition to now place it in a better position by reason of lapse of time, than it would have been in if it had done otherwise than it did do in the lower court.

Wherefore respondents pray that the prayer of the petition herein be denied.

Respectfully submitted,

HARRY W. STANDIDGE,
Proctor for Respondents.

Chicago, December, 1916.

No. 25.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1916.

IN THE MATTER OF THE PETITION OF THE INDIANA TRANSPORTATION COMPANY FOR WRIT OF PROHIBITION. } Original.

RETURN OF RESPONDENTS TO RULE ENTERED TO SHOW CAUSE WHY THE PRAYER OF THE PETITION FOR A WRIT OF PROHIBITION SHOULD NOT BE GRANTED HEREIN.

HARRY W. STANDIDGE,
PROCTOR FOR RESPONDENTS.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1916.

No. 25.

IN THE MATTER OF THE PETITION OF THE INDIANA TRANSPORTATION COMPANY FOR WRIT OF PROHIBITION. } Original.

RETURN OF RESPONDENTS TO RULE ENTERED TO SHOW CAUSE WHY THE PRAYER OF THE PETITION FOR A WRIT OF PROHIBITION SHOULD NOT BE GRANTED HEREIN.

Now come Respondents:

James F. Bishop, Administrator of the Estate of Marie Adamkiewicz, Deceased,
James F. Bishop, Administrator of the Estate of Alfred E. Anderson, Deceased,
James F. Bishop, Administrator of the Estate of Otto E. Anderson, Deceased,
James F. Bishop, Administrator of the Estate of Harold E. Andren, Deceased,
James F. Bishop, Administrator of the Estate of Amily Androvits, Deceased,
James F. Bishop, Administrator of the Estate of Emerene Androvits, Deceased,
James F. Bishop, Administrator of the Estate of Sunna Androvits, Deceased,

James F. Bishop, Administrator of the Estate of Frances Badalensky, Deceased,
James F. Bishop, Administrator of the Estate of Harry Baia, Deceased,
James F. Bishop, Administrator of the Estate of Morris W. Baldwin, Deceased,
James F. Bishop, Administrator of the Estate of Paul Bannach, Deceased,
James F. Bishop, Administrator of the Estate of Edward S. Bartlett, Deceased,
James F. Bishop, Administrator of the Estate of Margaret Becker, Deceased,
James F. Bishop, Administrator of the Estate of Florence Begitske, Deceased,
James F. Bishop, Administrator of the Estate of Agnes Behrendt, Deceased,
James F. Bishop, Administrator of the Estate of Gertrude Behrendt, Deceased,
James F. Bishop, Administrator of the Estate of William Belmonti, Deceased,
James F. Bishop, Administrator of the Estate of Charles Bender, Deceased,
James F. Bishop, Administrator of the Estate of Samuel Benn, Deceased,
James F. Bishop, Administrator of the Estate of Le Roy D. Bennett, Deceased,
James F. Bishop, Administrator of the Estate of David G. Benson, Deceased,
James F. Bishop, Administrator of the Estate of Myrtle J. Berglund, Deceased,
James F. Bishop, Administrator of the Estate of David A. Bergman, Deceased,
James F. Bishop, Administrator of the Estate of Harry D. Bergquist, Deceased,
James F. Bishop, Administrator of the Estate of Ida May Berlin, Deceased,
James F. Bishop, Administrator of the Estate of Joseph Bertrand, Deceased,
James F. Bishop, Administrator of the Estate of Mathilda Beutelspacher, Deceased,
James F. Bishop, Administrator of the Estate of Frederick Biehl, Deceased,

James F. Bishop, Administrator of the Estate of Frank J. Binkley, Deceased,
James F. Bishop, Administrator of the Estate of Carl Bluch, Deceased,
James F. Bishop, Administrator of the Estate of Matthew J. Bonga, Deceased,
James F. Bishop, Administrator of the Estate of Elizabeth Bosch, Deceased,
James F. Bishop, Administrator of the Estate of Oliver J. Bouffard, Deceased,
James F. Bishop, Administrator of the Estate of Anna Braitsch, Deceased,
James F. Bishop, Administrator of the Estate of Frederick Braitsch, Deceased,
James F. Bishop, Administrator of the Estate of Gertrude Braitsch, Deceased,
James F. Bishop, Administrator of the Estate of Hattie Braitsch, Deceased,
James F. Bishop, Administrator of the Estate of John Braitsch, Deceased,
James F. Bishop, Administrator of the Estate of Marie Braitsch, Deceased,
James F. Bishop, Administrator of the Estate of Thomas F. Brennan, Deceased,
James F. Bishop, Administrator of the Estate of Anna Brenner, Deceased,
James F. Bishop, Administrator of the Estate of Harriet Budner, Deceased,
James F. Bishop, Administrator of the Estate of Arthur Buege, Deceased,
James F. Bishop, Administrator of the Estate of Annie Buth, Deceased,
James F. Bishop, Administrator of the Estate of Thomas J. Carroll, Deceased,
James F. Bishop, Administrator of the Estate of Nellie Casper, Deceased,
James F. Bishop, Administrator of the Estate of Mary Ceranek, Deceased,
James F. Bishop, Administrator of the Estate of Michael Chamberlain, Deceased,
James F. Bishop, Administrator of the Estate of Frieda Christiansen, Deceased,

James F. Bishop, Administrator of the Estate of Marie Eleanor Clarke, Deceased,
James F. Bishop, Administrator of the Estate of Signa Clarke, Deceased,
James F. Bishop, Administrator of the Estate of Celia Colombik, Deceased,
James F. Bishop, Administrator of the Estate of Rose V. Cullen, Deceased,
James F. Bishop, Administrator of the Estate of John Daly, Deceased,
James F. Bishop, Administrator of the Estate of Fred J. Dankers, Deceased,
James F. Bishop, Administrator of the Estate of Martha A. Darkar, Deceased,
James F. Bishop, Administrator of the Estate of Lillian Davis, Deceased,
James F. Bishop, Administrator of the Estate of John Debnar, Deceased,
James F. Bishop, Administrator of the Estate of Caroline M. De Tamble, Deceased,
James F. Bishop, Administrator of the Estate of Paul Dolgner, Deceased,
James F. Bishop, Administrator of the Estate of Charles Doll, Deceased,
James F. Bishop, Administrator of the Estate of Robert Doll, Deceased,
James F. Bishop, Administrator of the Estate of Eleanora Doneske, Deceased,
James F. Bishop, Administrator of the Estate of Florence T. Drury, Deceased,
James F. Bishop, Administrator of the Estate of John Dudek, Deceased,
James F. Bishop, Administrator of the Estate of Mary Dudek, Deceased,
James F. Bishop, Administrator of the Estate of Bessie Dvorak, Deceased,
James F. Bishop, Administrator of the Estate of Minnie Dziondziak, Deceased,
James F. Bishop, Administrator of the Estate of Mary Helen Egan, Deceased,
James F. Bishop, Administrator of the Estate of Nick Elecks (alias Illick), Deceased.

James F. Bishop, Administrator of the Estate of Harry Engenhart, Deceased,
James F. Bishop, Administrator of the Estate of Angela Etzkorn, Deceased,
James F. Bishop, Administrator of the Estate of William Feehan, Deceased,
James F. Bishop, Administrator of the Estate of Dorothy Fitzgerald, Deceased,
James F. Bishop, Administrator of the Estate of Nellie Fitzgerald, Deceased,
James F. Bishop, Administrator of the Estate of Henry Flemming, Deceased,
James F. Bishop, Administrator of the Estate of Emil Flicek, Deceased,
James F. Bishop, Administrator of the Estate of Harry L. Foster, Deceased,
James F. Bishop, Administrator of the Estate of Marie Frackowiak, Deceased.
James F. Bishop, Administrator of the Estate of Alice Frederick, Deceased,
James F. Bishop, Administrator of the Estate of Yadwiga Freilich, Deceased,
James F. Bishop, Administrator of the Estate of Anna Frisina, Deceased,
James F. Bishop, Administrator of the Estate of Philip Frisina, Deceased,
James F. Bishop, Administrator of the Estate of Marie Gabriel, Deceased,
James F. Bishop, Administrator of the Estate of Edward Gatens, Deceased,
James F. Bishop, Administrator of the Estate of Wladyslaw Gecewicz, Deceased,
James F. Bishop, Administrator of the Estate of Emily Genda (Alias Gonda), Deceased,
James F. Bishop, Administrator of the Estate of Clara Gorney, Deceased,
James F. Bishop, Administrator of the Estate of Ellen Marie Gradert, Deceased,
James F. Bishop, Administrator of the Estate of Frank Grajek, Deceased,
James F. Bishop, Administrator of the Estate of Clara Grandt, Deceased,

James F. Bishop, Administrator of the Estate of Tillie Grandt, Deceased,
James F. Bishop, Administrator of the Estate of Emily H. Greabner, Deceased,
James F. Bishop, Administrator of the Estate of Leonardo Greco, Deceased,
James F. Bishop, Administrator of the Estate of Edward Grimms, Deceased,
James F. Bishop, Administrator of the Estate of Katarzyna Grochowski, Deceased,
James F. Bishop, Administrator of the Estate of Emma Grossman, Deceased,
James F. Bishop, Administrator of the Estate of Helen Grzeskowiak, Deceased,
James F. Bishop, Administrator of the Estate of William Guenther, Deceased,
James F. Bishop, Administrator of the Estate of Frank Hajduk, Deceased,
James F. Bishop, Administrator of the Estate of Theodore Hallas, Deceased,
James F. Bishop, Administrator of the Estate of Katherine Margaret Hamilton, Deceased,
James F. Bishop, Administrator of the Estate of Inga L. Hammersted, Deceased,
James F. Bishop, Administrator of the Estate of Harold Hans Hansen, Deceased,
James F. Bishop, Administrator of the Estate of Elizabeth Harke, Deceased,
James F. Bishop, Administrator of the Estate of John F. Hawkins, Deceased,
James F. Bishop, Administrator of the Estate of Mary Hefferen, Deceased,
James F. Bishop, Administrator of the Estate of John Helfenbien, Deceased,
James F. Bishop, Administrator of the Estate of Barbara Elizabeth Hengels, Deceased,
James F. Bishop, Administrator of the Estate of Henry Hill, Deceased,
James F. Bishop, Administrator of the Estate of Mary Hill, Deceased,
James F. Bishop, Administrator of the Estate of Anna Hillmann, Deceased,

James F. Bishop, Administrator of the Estate of William Hinczewska, Deceased.
James F. Bishop, Administrator of the Estate of Clifford Edward Hipple, Deceased,
James F. Bishop, Administrator of the Estate of Cora May Hipple, Deceased,
James F. Bishop, Administrator of the Estate of Hazel Marie Hipple, Deceased,
James F. Bishop, Administrator of the Estate of George Holke, Deceased,
James F. Bishop, Administrator of the Estate of William Holtz, Deceased,
James F. Bishop, Administrator of the Estate of Vincent Holub, Deceased,
James F. Bishop, Administrator of the Estate of Sophie Homola, Deceased,
James F. Bishop, Administrator of the Estate of Vlasta Homola, Deceased,
James F. Bishop, Administrator of the Estate of Ella Horazdovsky, Deceased,
James F. Bishop, Administrator of the Estate of Emma Horazdovsky, Deceased,
James F. Bishop, Administrator of the Estate of Ruth E. Hubbard, Deceased,
James F. Bishop, Administrator of the Estate of Joseph Hutchinson, Deceased,
James F. Bishop, Administrator of the Estate of Agnes Ignasiak, Deceased,
James F. Bishop, Administrator of the Estate of Antoinette Ignasiak, Deceased,
James F. Bishop, Administrator of the Estate of William Illig, Jr., Deceased,
James F. Bishop, Administrator of the Estate of Albert Immel, Deceased,
James F. Bishop, Administrator of the Estate of Antoinette Inciardi, Deceased,
James F. Bishop, Administrator of the Estate of Stanley Jagoda, Deceased,
James F. Bishop, Administrator of the Estate of Ignatz Jakubowska, Deceased,
James F. Bishop, Administrator of the Estate of Antonette Jarzembowska, Deceased,

James F. Bishop, Administrator of the Estate of Julia Jaworski, Deceased,
James F. Bishop, Administrator of the Estate of Martha Jaworski, Deceased,
James F. Bishop, Administrator of the Estate of Lottie Jelen, Deceased,
James F. Bishop, Administrator of the Estate of Harry B. Johnson, Deceased,
James F. Bishop, Administrator of the Estate of George W. Jost, Deceased,
James F. Bishop, Administrator of the Estate of Blanche Kalal, Deceased,
James F. Bishop, Administrator of the Estate of Agnes Kasperski, Deceased,
James F. Bishop, Administrator of the Estate of Mary Kaszuba, Deceased,
James F. Bishop, Administrator of the Estate of Margaret Keenan, Deceased,
James F. Bishop, Administrator of the Estate of Mary Keenan, Deceased,
James F. Bishop, Administrator of the Estate of Albert J. Kennedy, Deceased,
James F. Bishop, Administrator of the Estate of Sebastian J. Kleifges, Deceased,
James F. Bishop, Administrator of the Estate of Aloysius Kluzynska, Deceased,
James F. Bishop, Administrator of the Estate of Lucy Kluzynska, Deceased,
James F. Bishop, Administrator of the Estate of Helen Klemkowski, Deceased,
James F. Bishop, Administrator of the Estate of Anna Knopik, Deceased,
James F. Bishop, Administrator of the Estate of Anna Kolar, Deceased,
James F. Bishop, Administrator of the Estate of Rose Kolder, Deceased,
James F. Bishop, Administrator of the Estate of Margaret Kommer, Deceased,
James F. Bishop, Administrator of the Estate of Steve Kouba, Deceased,
James F. Bishop, Administrator of the Estate of Anna Koukl, Deceased,

James F. Bishop, Administrator of the Estate of Annie Kowalski, Deceased,
James F. Bishop, Administrator of the Estate of Julia Kowalski, Deceased,
James F. Bishop, Administrator of the Estate of Walter Krajnik, Deceased,
James F. Bishop, Administrator of the Estate of George M. Krich, Deceased,
James F. Bishop, Administrator of the Estate of Helen Krzewinski, Deceased,
James F. Bishop, Administrator of the Estate of Walter Krzewinski, Deceased,
James F. Bishop, Administrator of the Estate of Walter Kubicki, Deceased,
James F. Bishop, Administrator of the Estate of Mary A. Kupski, Deceased,
James F. Bishop, Administrator of the Estate of Antoni Kwak, Deceased,
James F. Bishop, Administrator of the Estate of Joseph La Coiza, Deceased,
James F. Bishop, Administrator of the Estate of Casper Laline, Jr., Deceased,
James F. Bishop, Administrator of the Estate of Walter Lange, Deceased,
James F. Bishop, Administrator of the Estate of Nellie Latowski, Deceased,
James F. Bishop, Administrator of the Estate of Walter Latowski, Deceased,
James F. Bishop, Administrator of the Estate of Hattie Laurinaitis, Deceased,
James F. Bishop, Administrator of the Estate of Ignatious Leonarczyk, Deceased,
James F. Bishop, Administrator of the Estate of Edward Leu, Deceased,
James F. Bishop, Administrator of the Estate of Violet Lewandowski, Deceased,
James F. Bishop, Administrator of the Estate of John Lewicki, Deceased,
James F. Bishop, Administrator of the Estate of Tillie Lewicki, Deceased,
James F. Bishop, Administrator of the Estate of John W. Lockey, Deceased,

James F. Bishop, Administrator of the Estate of Esther Lofgren, Deceased,
James F. Bishop, Administrator of the Estate of Frances Lohr, Deceased,
James F. Bishop, Administrator of the Estate of Barbara Lukens, Deceased,
James F. Bishop, Administrator of the Estate of John E. Lynch, Deceased,
James F. Bishop, Administrator of the Estate of John Lyons, Deceased,
James F. Bishop, Administrator of the Estate of Thomas Lyons, Deceased,
James F. Bishop, Administrator of the Estate of Julia Malecha, Deceased,
James F. Bishop, Administrator of the Estate of Mary Malik, Deceased,
James F. Bishop, Administrator of the Estate of Stephania Malik, Deceased,
James F. Bishop, Administrator of the Estate of John Manikowska, Deceased,
James F. Bishop, Administrator of the Estate of Louis Maranz, Deceased,
James F. Bishop, Administrator of the Estate of Josephine Markowski, Deceased,
James F. Bishop, Administrator of the Estate of Thomas Marren, Deceased,
James F. Bishop, Administrator of the Estate of Paul Marton, Deceased,
James F. Bishop, Administrator of the Estate of Paul Marton, Jr., Deceased,
James F. Bishop, Administrator of the Estate of May McKenna, Deceased,
James F. Bishop, Administrator of the Estate of John Joseph McMahon, Deceased,
James F. Bishop, Administrator of the Estate of Edna Meicke, Deceased,
James F. Bishop, Administrator of the Estate of Emma Meyer, Deceased,
James F. Bishop, Administrator of the Estate of Stella Michalski, Deceased,
James F. Bishop, Administrator of the Estate of Anna Mietlicki, Deceased,

James F. Bishop, Administrator of the Estate of Hedwig Milcarski, Deceased,
James F. Bishop, Administrator of the Estate of Joseph Mootz, Deceased,
James F. Bishop, Administrator of the Estate of Catherine Moran, Deceased,
James F. Bishop, Administrator of the Estate of Nellie Moran, Deceased,
James F. Bishop, Administrator of the Estate of Edward Moreau, Deceased,
James F. Bishop, Administrator of the Estate of Edwin Morizmeier, Deceased,
James F. Bishop, Administrator of the Estate of Catherine Moynihan, Deceased,
James F. Bishop, Administrator of the Estate of Hanora Moynihan, Deceased,
James F. Bishop, Administrator of the Estate of John Murawski, Jr., Deceased,
James F. Bishop, Administrator of the Estate of Anna Myszkowski, Deceased,
James F. Bishop, Administrator of the Estate of Mildred Nepras, Deceased,
James F. Bishop, Administrator of the Estate of Lillie Neumann, Deceased,
James F. Bishop, Administrator of the Estate of Agnes Novotny, Deceased,
James F. Bishop, Administrator of the Estate of Mary Novotny, Deceased,
James F. Bishop, Administrator of the Estate of William Novotny, Deceased,
James F. Bishop, Administrator of the Estate of Eva Nowaczyk, Deceased,
James F. Bishop, Administrator of the Estate of Florian Nowak, Deceased,
James F. Bishop, Administrator of the Estate of Frances Nowak, Deceased,
James F. Bishop, Administrator of the Estate of Angeline Nyka, Deceased,
James F. Bishop, Administrator of the Estate of Catherine O'Donnell, Deceased,
James F. Bishop, Administrator of the Estate of Margaret Olson, Deceased,

James F. Bishop, Administrator of the Estate of Margaret O'Neill, Deceased,
James F. Bishop, Administrator of the Estate of Patrick O'Reilly, Deceased,
James F. Bishop, Administrator of the Estate of Ethel Osen, Deceased,
James F. Bishop, Administrator of the Estate of Pearl Osen, Deceased,
James F. Bishop, Administrator of the Estate of Martha Ostrowske, Deceased,
James F. Bishop, Administrator of the Estate of Frank Palacz, Deceased,
James F. Bishop, Administrator of the Estate of Peter Pankowski, Deceased,
James F. Bishop, Administrator of the Estate of Annie Parminter, Deceased,
James F. Bishop, Administrator of the Estate of Thomas W. Parminter, Deceased,
James F. Bishop, Administrator of the Estate of Carolina Parucka, Deceased,
James F. Bishop, Administrator of the Estate of Anna Patrunky, Deceased,
James F. Bishop, Administrator of the Estate of Martha Patrunky, Deceased,
James F. Bishop, Administrator of the Estate of James H. Payne, Jr., Deceased,
James F. Bishop, Administrator of the Estate of Albert Pecha, Jr., Deceased,
James F. Bishop, Administrator of the Estate of Tom Perich, Deceased,
James F. Bishop, Administrator of the Estate of Anna Pesch, Deceased,
James F. Bishop, Administrator of the Estate of Charles F. Pierce, Deceased,
James F. Bishop, Administrator of the Estate of Albert Pierson, Deceased,
James F. Bishop, Administrator of the Estate of Lottie Lucy Placzek, Deceased,
James F. Bishop, Administrator of the Estate of Susie C. Plamondon, Deceased,
James F. Bishop, Administrator of the Estate of Mae Poch, Deceased,

James F. Bishop, Administrator of the Estate of Mamie Ponicki, Deceased,
James F. Bishop, Administrator of the Estate of Eleanora Poppas, Deceased,
James F. Bishop, Administrator of the Estate of Martin Powlowski, Deceased,
James F. Bishop, Administrator of the Estate of Lillian Prochnow, Deceased,
James F. Bishop, Administrator of the Estate of Mike Psynko, Deceased,
James F. Bishop, Administrator of the Estate of Anna Quaine, Deceased,
James F. Bishop, Administrator of the Estate of Louisa Radoll, Deceased,
James F. Bishop, Administrator of the Estate of Frank W. Rakowski, Deceased,
James F. Bishop, Administrator of the Estate of Sophia Reis, Deceased,
James F. Bishop, Administrator of the Estate of Anna Reitinger, Deceased,
James F. Bishop, Administrator of the Estate of Ella Remy, Deceased,
James F. Bishop, Administrator of the Estate of Florence Remy, Deceased,
James F. Bishop, Administrator of the Estate of Mary Riedl, Deceased,
James F. Bishop, Administrator of the Estate of Rosie Riedl, Deceased,
James F. Bishop, Administrator of the Estate of Robert J. T. Riker, Deceased,
James F. Bishop, Administrator of the Estate of Herman A. Ristow, Deceased,
James F. Bishop, Administrator of the Estate of William F. Ristow, Deceased,
James F. Bishop, Administrator of the Estate of May Roglin, Deceased,
James F. Bishop, Administrator of the Estate of Clara Rohn, Deceased,
James F. Bishop, Administrator of the Estate of Lydia Rohn, Deceased,
James F. Bishop, Administrator of the Estate of Ella Rohse, Deceased,

James F. Bishop, Administrator of the Estate of Lillian Rohse, Deceased,
James F. Bishop, Administrator of the Estate of Minnie Roser, Deceased,
James F. Bishop, Administrator of the Estate of Monicka T. Rozycki, Deceased,
James F. Bishop, Administrator of the Estate of Blanche Rudcki, Deceased,
James F. Bishop, Administrator of the Estate of William J. Rupp, Deceased,
James F. Bishop, Administrator of the Estate of Elsie Rusch, Deceased,
James F. Bishop, Administrator of the Estate of Minnie Rylands, Deceased,
James F. Bishop, Administrator of the Estate of Rozalia Rynaszewski, Deceased,
James F. Bishop, Administrator of the Estate of Frank Sagenbrecht, Deceased,
James F. Bishop, Administrator of the Estate of John R. Sallwasser, Deceased,
James F. Bishop, Administrator of the Estate of Edwin W. Schaefer, Deceased,
James F. Bishop, Administrator of the Estate of Edward Schmelz, Deceased,
James F. Bishop, Administrator of the Estate of Sophia M. Schmidt, Deceased,
James F. Bishop, Administrator of the Estate of Carolina Schnell, Deceased,
James F. Bishop, Administrator of the Estate of Nellie Schnorr, Deceased,
James F. Bishop, Administrator of the Estate of Alma Schoenke, Deceased,
James F. Bishop, Administrator of the Estate of Edward Schultz, Deceased,
James F. Bishop, Administrator of the Estate of Sabina Schultz, Deceased,
James F. Bishop, Administrator of the Estate of Verna Schultz, Deceased,
James F. Bishop, Administrator of the Estate of Bertha Selig, Deceased,
James F. Bishop, Administrator of the Estate of Edward Selig, Deceased,

James F. B
Frank Seli
hop, Administrator of the Estate of
, Deceased,
James F. Bi
Nellie She
hop, Administrator of the Estate of
ock, Deceased,
James F. Bi
Frances S
hop, Administrator of the Estate of
dlecka, Deceased,
James F. Bi
Wilhelm M
hop, Administrator of the Estate of
Siegmann, Deceased,
James F. Bi
Lena Siep,
hop, Administrator of the Estate of
Deceased,
James F. Bi
Joseph Sie
hop, Administrator of the Estate of
azek, Deceased,
James F. Bi
Mary Sier
hop, Administrator of the Estate of
zek, Deceased,
James F. Bi
Solomea Sl
hop, Administrator of the Estate of
minski, Deceased,
James F. Bi
Roman Slo
hop, Administrator of the Estate of
vinski, Deceased,
James F. Bi
Margaret
hop, Administrator of the Estate of
mith, Deceased,
James F. Bi
Hattie Sos
hop, Administrator of the Estate of
owska, Deceased,
James F. Bi
Charles Sta
hop, Administrator of the Estate of
hlik, Deceased,
James F. Bi
Anna Stak
hop, Administrator of the Estate of
r, Deceased,
James F. Bi
Pauline St
hop, Administrator of the Estate of
ker, Deceased,
James F. Bi
Hattie Stef
hop, Administrator of the Estate of
en, Deceased,
James F. Bi
Grace W. S
hop, Administrator of the Estate of
evens, Deceased,
James F. Bi
Gertrude St
hop, Administrator of the Estate of
ork, Deceased,
James F. Bi
Katie Stra
hop, Administrator of the Estate of
ic, Deceased,
James F. Bi
Jennie Stre
hop, Administrator of the Estate of
t, Deceased,
James F. Bi
Mary Eliza
hop, Administrator of the Estate of
eth Sullivan, Deceased,
James F. Bi
Benedicta S
hop, Administrator of the Estate of
witala, Deceased,

James F. Bishop, Administrator of the Estate of Josephine Szymanski, Deceased,
James F. Bishop, Administrator of the Estate of Herbert Taube, Deceased,
James F. Bishop, Administrator of the Estate of Clara Teichmiller, Deceased,
James F. Bishop, Administrator of the Estate of Anna Tempinski, Deceased.
James F. Bishop, Administrator of the Estate of George Theede, Jr., Deceased,
James F. Bishop, Administrator of the Estate of Agnes Theis, Deceased,
James F. Bishop, Administrator of the Estate of Clara Theis, Deceased,
James F. Bishop, Administrator of the Estate of Emma Thommen, Deceased,
James F. Bishop, Administrator of the Estate of Arthur Tiedemann, Deceased,
James F. Bishop, Administrator of the Estate of Emily Tiedemann, Deceased,
James F. Bishop, Administrator of the Estate of Elizabeth Tismer, Deceased,
James F. Bishop, Administrator of the Estate of Ernest Tismer, Deceased,
James F. Bishop, Administrator of the Estate of Herbert Tismer, Deceased,
James F. Bishop, Administrator of the Estate of Minnie Tismer, Deceased,
James F. Bishop, Administrator of the Estate of George L. Tonnesen, Deceased,
James F. Bishop, Administrator of the Estate of Frank Tranckitella, Deceased,
James F. Bishop, Administrator of the Estate of John Uebel, Deceased.
James F. Bishop, Administrator of the Estate of Anna Urban, Deceased,
James F. Bishop, Administrator of the Estate of Zigmund Urbanowicz, Deceased,
James F. Bishop, Administrator of the Estate of Estelle Decker Valentine, Deceased,
James F. Bishop, Administrator of the Estate of Sylvia Eva Varela, Deceased,

James F. Bishop, Administrator of the Estate of Mary Vlasak, Deceased,
James F. Bishop, Administrator of the Estate of Christian Vogel, Deceased,
James F. Bishop, Administrator of the Estate of Albert Weichbrodt, Deceased,
James F. Bishop, Administrator of the Estate of Lydia Wellestat, Deceased,
James F. Bishop, Administrator of the Estate of Carrie Wesemann, Deceased,
James F. Bishop, Administrator of the Estate of Thomas Wielgos, Deceased,
James F. Bishop, Administrator of the Estate of John E. Wilkinson, Deceased,
James F. Bishop, Administrator of the Estate of Leonard Winski, Deceased,
James F. Bishop, Administrator of the Estate of Eva Wodtke, Deceased,
James F. Bishop, Administrator of the Estate of Harry C. Woller, Deceased,
James F. Bishop, Administrator of the Estate of Catherine E. Wood, Deceased,
James F. Bishop, Administrator of the Estate of George John Wood, Jr., Deceased,
James F. Bishop, Administrator of the Estate of Antonia Zastera, Deceased,
James F. Bishop, Administrator of the Estate of Julia Zastera, Deceased,
James F. Bishop, Administrator of the Estate of Mary Zastera, Deceased,
James F. Bishop, Administrator of the Estate of Alma Zielske, Deceased,
James F. Bishop, Administrator of the Estate of Josephine Zimma, Deceased,
James F. Bishop, Administrator of the Estate of Clemens Zuchowski, Deceased,
Rosie Albertz, Administratrix of the Estate of Mary Albertz, Deceased,
Richard Clarke, Administrator of the Estate of Robert L. Clarke, Deceased,
Harry Evenhouse, Administrator of the Estate of Annie Evenhouse, Deceased,

Harry Evenhouse, Administrator of the Estate of Jennie Evenhouse, Deceased,
Anton Forst, Administrator of the Estate of Emma Marie Forst, , Deceased,
Samuel Ginsberg, Administrator of the Estate of Philip L. Ginsberg, Deceased,
George L. Farmer, Administrator of the Estate of John Ralph Holcombe, Deceased,
Maud P. Boyees, Administratrix of the Estate of Paul Jahnke, , Deceased,
Lillian S. Schmalz, Administratrix de bonis non of the Estate of Nels Peter Johnson, Deceased,
Raymond Appelt, Administrator of the Estate of Leo Lewickki, Deceased,
Mary Murphy, Administratrix of the Estate of David M. Murphy, Deceased,
John A. Fitzgerald, Administrator of the Estate of Mary Murphy, Deceased,
Wilhelm Schoenholz, Administrator of the Estate of Adolphina Schoenholz, Deceased,
Anton Schultz, Administrator of the Estate of John Schultz, Deceased,
Martha Mundt, Administratrix of the Estate of Catherine Trogg, Deceased,
Martha Mundt, Administratrix of the Estate of Charles Trogg, Deceased,
Robert J. Mandl, Administrator of the Estate of Emil T. Zaik, Deceased,
Lillian M. Buidner, Mae Gehrke, William M. Gourlay, Kate Lyons, Mary Lyons, by Kate Lyons, as next friend, Winifred Lyons, by Kate Lyons, as next friend, John Marley, Martha Neumann, Bessie O'Brien, Edmund K. Plamondon, Irene C. Plamondon, Marie C. Plamondon, Nora Purcell, Emil Rupp, and Joseph Schultz, by Harry W. Standidge, their proctor, and in response to the rule entered to show cause why the prayer of the petition for a writ of prohibition should not be granted herein, state that said petition is insufficient on its face for the granting of the relief prayed for therein, and further state as follows:

1. That there is pending in the District Court of the United States for the Northern District of Illinois, Eastern Division, before Honorable Kenesaw M. Landis, one of the judges of said court, the cause in admiralty of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, *et al.,* Libelants, *vs.* St. Joseph-Chicago Steamship Company, *et al.,* Respondents, said additional libelants in said cause being said respondents above named herein, and said additional respondents therein being 11 in number, and including petitioner herein, who, as alleged in the first paragraph on page 1 of said petition, was and is a corporation organized and existing under the laws of the State of Indiana, with its principal place of business at Michigan City, Indiana.

2. That on August 21, 1915, James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, filed his libel in admiralty, in said cause, against petitioner, and others, as alleged in the second paragraph on pages 1 and 2 of said petition.

3. That after the filing of said libel in said cause, a citation was served upon petitioner, and thereupon petitioner filed exceptions to said libel, as set forth in the third paragraph on page 2 of said petition.

4. That as to the allegations of the fourth paragraph on pages 2 and 3 of said petition, respondents deny that on July 24, 1916, said original libelant was permitted to join as co-libelants with him 373 other libelants, and respondents say that on said 24th day of July, 1916, the court entered an order granting leave to 372 additional parties to intervene

as libelants in said cause, and thereupon also ordered that all libelants have leave to file an amended libel instanter; respondents admit that, as alleged in said fourth paragraph of said petition, said additional libelants were represented in part by said James F. Bishop, as administrator, etc., and other administrators of the estates of deceased people who lost their lives as passengers of the steamer Eastland at the same time and in the same way that said original libelant lost his life, by reason of the capsizing of said steamer, and that said co-libelants as administrators represented different deceased men, women and children, and that in addition thereto there were included a number of persons as co-libelants who sustained personal injuries and loss of property by reason of the capsizing of said steamer, all of which administrators and persons suing for personal injuries, loss of property, etc., have separate and distinct causes of action for the loss and damage sustained by them; respondents deny that said amended libel alleges that all of said libelants "have separate and distinct causes of action" for the loss and damage sustained by them; respondents deny that "no process was prayed for or issued under said amended libel", and say that said amended libel prayed "that process in due form of law according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction may issue against said above named respondents, and each of them," (including said petitioner), "and that said respondents and each of them be cited to appear and answer upon oath all and singular the matters herein propounded, and that this Honorable Court decree the payment of the damages aforesaid, with costs, and that said

libelants may have such other and further relief as in law and justice they are entitled to receive," and process under said amended libel was issued against all respondents who were not parties to, and who had not been served with a citation under, said original libel.

5. Respondents admit that said amended libel alleges that petitioner was a corporation organized under the laws of the State of Indiana, as alleged in the fifth paragraph on page 3 of said petition.

6. Respondents say that they are not advised as to the truth of, and neither admit nor deny, the allegation in the sixth paragraph on page 3 of said petition, that at the time of the amending of said libel petitioner was a foreign corporation and nonresident of the State of Illinois, and not doing business in said state, and respondents deny the further allegation in said sixth paragraph that petitioner was "therefore not subject to service upon it by process of the District Court of the United States for the Northern District of Illinois."

7. Respondents admit that, as alleged in the seventh paragraph on pages 3 and 4 of said petition, upon the filing of said amended libel petitioner was ordered to plead to same by September 2, 1916, and that on said 2nd day of September, 1916, petitioner filed its exceptions to said amended libel alleging that said 373 co-libelants were improperly joined with said original libelant, as will appear from a copy of said exceptions set forth on page 15 of said petition, and respondents say that as to said order that petitioner plead to said amended libel by September 2, 1916, petitioner, by its proctor, Mr. Charles

E. Kremer, who is also proctor for petitioner herein, had notice of the application for, and was present in court at the time of the entry of, said order, and made no objection thereto, and the court entered said order upon agreement for the entry thereof by, and with the consent of, both said proctor for said petitioner and Harry W. Standidge, proctor for the libelants named in said amended libel, and upon request of said proctor for said petitioner that petitioner be given until September 2, 1916, which was forty days after July 24, 1916, the date of the entry of said order, to plead to said amended libel, and respondents say that on the fortieth and last day allowed by said order for petitioner to plead to said amended libel, petitioner complied with said order by filing exceptions to said amended libel, and so plead thereto without raising any objection whatever that it had not been served with a citation under said amended libel, as above set forth.

8. Respondents admit the allegations set forth in the eighth paragraph on page 4 of said petition, that on September 18, 1916, said cause came on for hearing before respondent upon said amended libel and said exceptions of petitioner thereto, and that thereupon, respondent, upon a hearing, overruled said exceptions and entered an order that petitioner have 20 days in which to plead to said amended libel.

9. Respondents say that as to the allegations in the ninth paragraph on page 4 of said petition, petitioner has failed to show in its said petition that after the court, on September 18, 1916, overruled said exceptions theretofore filed by petitioner to said amended libel and ordered petitioner to plead

thereto within 20 days thereafter, within said period of 20 days, and on October 7, 1916, which, as respondents are informed and believe, was prior to the time of the filing of said petition herein, petitioner filed additional exceptions to said amended libel in said cause, stating that petitioner did not waive said exceptions theretofore filed by it and insisted upon its right to further object to the joining of said additional libelants, and stating also that it further excepted to said amended libel because it did not state facts and circumstances which made out a cause of action against said petitioner, and that in all of said particulars said libel was imperfect and insufficient, and that petitioner was not bound to answer same, a copy of which exceptions is attached hereto and made a part hereof, and said additional exceptions are still on file and unheard and undisposed of in said cause, and respondents say that if said allegations in said additional exceptions to said amended libel that said amended libel does not state facts and circumstances which make out a cause of action against petitioner, and that therefore petitioner is not bound to answer same, are well founded in point of law, petitioner may never be required to answer said amended libel, and therefore respondents deny said allegations in said ninth paragraph of said petition that, because of the matters set forth in said petition, petitioner is compelled to answer said amended libel, or suffer a default, etc.

10. And respondents deny that by reason of the matters and things set forth in said petition petitioner is entitled to a writ of prohibition as prayed for therein. And respondents further say that if,

by reason of the matters and things set forth in said petition petitioner is entitled to a writ of prohibition as prayed for therein, petitioner is not entitled to such writ by reason of said additional exceptions filed by it to said amended libel, which, as above stated, are still on file and unheard and undisposed of in said District Court, and which petitioner has failed to set forth in its said petition, and a copy of which is attached hereto and made a part hereof, as above set forth.

Wherefore respondents pray that the prayer of the petition herein be denied.

JAMES F. BISHOP,
Administrator of the Estates of various deceased persons, and each thereof, as above set forth, Respondents herein.

HARRY W. STANDIDGE,
Proctor for Respondents.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

James F. Bishop, being duly sworn, says that he is Administrator of the Estates of various deceased persons, and each thereof, as above set forth; that he has read the above and foregoing return, and knows the contents thereof, and that the same is true, as he verily believes.

JAMES F. BISHOP,

Subscribed and sworn to before me this 1st day of December, A. D. 1916.

BLANCHE I. GRIER,
(Seal) *Notary Public.*

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

Harry W. Standidge, being duly sworn, says that he is proctor for the respondents herein; that he has read the above and foregoing return, and knows the contents thereof, and that the same is true.

HARRY W. STANDIDGE,

Subscribed and sworn to before me this 1st day of December, A. D. 1916.

BLANCHE I. GRIER,
(Seal) *Notary Public.*

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

James F. Bishop, Administrator of the Estate of Earl H. Dawson, Deceased, *et al.*,
vs.
St. Joseph-Chicago Steamship Company, a corporation, *et al.*
} No. 32236.

And now comes the Indiana Transportation Company, one of the respondents above named, and excepts to the amended libel of James F. Bishop, administrator of the estate of Earl H. Dawson, deceased, and others, as follows:

This respondent does not hereby waive its exceptions heretofore filed in relation to the misjoinder of 373 additional libels and its right, and insists that this court has not jurisdiction of the respondent of so much of the said amended libel as sets up the claims of the 373 additional libelants, joined with the original libel, and it therefore insists upon its right to further object to the joining of said 373 additional libelants, and further because said amended libel does not state facts and circumstances which make out a cause of action against this respondent, in all of which particulars the said amended libel is imperfect and insufficient, and that the said respondent is not bound to answer the same.

INDIANA TRANSPORTATION COMPANY,
By C. E. KREMER,
Its Proctor.

C. E. KREMER,
Proctor for the Indiana Transportation Company.